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8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA
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10	MICHAEL SCHULZE,)	1:05-cv-00180-AWI-LJO
)	
11	Plaintiff,)	DEFENDANTS' SECOND EX PARTE
)	APPLICATION FOR EXTENSION OF
12	v.)	TIME BY WHICH TO FILE
)	DISPOSITIVE MOTIONS; ORDER
13	FEDERAL BUREAU OF)	
	INVESTIGATION, DRUG)	[Local Rule 6-144(c)]
14	ENFORCEMENT ADMINISTRATION,)	
	UNITED STATES MARSHALS)	
15	SERVICE and DEPARTMENT OF)	
	JUSTICE,)	
16	Defendants.)	
17	_____)	

18 Pursuant to Local Rule 6-144(c), defendants Federal Bureau
19 of Investigation, Drug Enforcement Administration, United States
20 Marshals Service and Department of Justice ("defendants") request
21 by way of this ex parte application a sixty-day extension of time
22 by which all parties must file dispositive motions in this case.
23 The present dispositive motion deadline is March 20, 2007.
24 Defendants seek to extend this deadline until May 21, 2007, and
25 base this application on good cause. Defendants explain as
26 follows:
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1 1. Plaintiff Michael Schulze ("plaintiff") brings FOIA and
2 Privacy Act claims within this action while incarcerated within
3 the Bureau of Prisons system. On January 20, 2006, this Court
4 issued a Discovery and Scheduling Order regarding this case.
5 (Doc 35). Within this order, the Court initially set a
6 dispositive motion filing deadline of January 20, 2007.

7 2. From January 17, 2007 through February 14, 2007, the
8 undersigned counsel for defendants tried a complicated
9 condemnation case in Courtroom 2 of this court. (Declaration of
10 Brian W. Enos ("Enos Decl."), para. 4). Since this trial
11 encompassed defendants' above-referenced dispositive motion
12 filing deadline, defendants moved ex parte on December 21, 2006
13 to extend this deadline two months, or until March 20, 2007. The
14 court granted this request by way of formal order, dated December
22, 2006. (Doc. 45).

15 3. Defendants at this time request an additional 60 days by
16 which to file dispositive motions in this case, and base their
17 request on good cause. To explain chronologically:

18 a. Plaintiff Michael Schulze, an inmate presently
19 housed within the Bureau of Prisons system, filed the
20 present FOIA/Privacy Act action in February 2005, and prior
21 to complying with defendant United States Marshals Service's
22 procedures and payment requirements for processing FOIA
23 requests. As a result, the USMS has only recently been able
24 to complete the processing of plaintiff's requests, and
25 awaits payment from plaintiff so it can send him requested
26 documents. (Enos Decl., para. 5(a); Exh. A).

1 b. To explain, and as revealed in the December 15,
2 2005 Declaration of USMS Associate General Counsel William
3 E. Bordley (see Enos Decl., Exh. A), plaintiff failed to
4 support his initial September 30, 2004, FOIA request to the
5 USMS with the requisite certification of identity.
6 Specifically, the USMS acknowledged receipt of plaintiff's
7 FOIA request by way of written letter dated October 19,
8 2004, and asked plaintiff to provide certification of his
9 identity at that time. Plaintiff did not provide such
10 certification as requested. In fact, the USMS was not
11 notified of plaintiff's filing the present action until late
12 2005. (Enos Decl., para. 5(b); See also Declaration of
13 William E. Bordley, paras. 3-7 and attachment to same,
14 attached to Enos Decl. as Exhibit A.)

15 c. On June 12, 2006, the USMS advised plaintiff in
16 writing that it had conducted a search of its records and
17 located approximately 994 pages of documents responsive to
18 his request. (Enos Decl., para. 5(c); Exh. B). At this
19 time, the USMS also disclosed the first 100 pages of
20 plaintiff's requested documents at no cost to him pursuant
21 to 28 C.F.R. §16.11(d)(3)(i). Within the above letter, the
22 USMS also explained where it redacted components of
23 additional documents to be disclosed (and identified the
24 FOIA exemptions justifying the same), and further advised
25 plaintiff that it would release records upon receiving
26 plaintiff's payment for them. (Ibid.)

1 d. On June 16, 2006, plaintiff advised the USMS in
2 writing of his willingness to pay for the above records.
3 (Enos Decl., para. 5(d); Exh. C)

4 e. On January 19, 2007, the USMS advised plaintiff in
5 writing that it had determined that it had 597 pages of
6 documents responsive to his FOIA request, rather than the
7 884 pages as earlier indicated, and explained this numerical
8 discrepancy. (Enos Decl., para. 5(e); Exh. D). The USMS
9 again explained the bases for his intended disclosures, and
10 again advised plaintiff that it would send him the requested
11 records upon its receipt of his payment for them. This
12 letter was returned to the USMS, in that the USMS had
13 inadvertently sent it to plaintiff's prior USP
14 Bennettsville, South Carolina address unaware that he had
15 since been transferred to USP Honolulu, Hawaii. I am
16 informed and believe that the USMS is now aware of this
17 issue and sending the attached letter to plaintiff in
18 Honolulu, and will further send plaintiff requested records
19 as soon as it receives his payment for them.

20 f. Based on the above, defendants seek an additional
21 60 days by which to file their dispositive motion in this
22 case. (Enos Decl., para. 5(f)). The USMS advises that it
23 will be able to send plaintiff his requested records, as
24 well as any necessary Vaughn index explaining redactions and
25 their legal bases, within this time frame. (Ibid.)

26 4. In addition to working with counsel for the USMS on
27 this matter, the undersigned is also working with counsel for the

1 DEA and FBI. (Enos Decl., para. 6) The FBI has recently
2 restructured its FOIA response procedures, and now processes all
3 FOIA requests at its main headquarters in Washington, D.C. rather
4 than appropriate field offices. As a result, FBI counsel in
5 Sacramento assigned to this case is determining the extent he may
6 need to coordinate with the appropriate personnel in Washington
7 as he assists with defendants' motion. If so, it may take a few
8 weeks to complete this coordination. (Ibid.)

9 5. Based on the above, an additional 60 days is needed to
10 prepare and file defendants' dispositive motion in this case.
11 Plaintiff is not prejudiced by this request, in that the USMS's
12 inability to process his FOIA request when first requested is the
13 result of his failing to provide the requisite certification of
14 identity. In addition, plaintiff has not yet paid for the
15 remaining documents, despite indicating his willingness to do so.
(Enos Decl., para. 7).

16 6. A timely stipulation extending time cannot be
17 reasonably obtained, in that plaintiff, acting pro se, is
18 presently incarcerated. (Enos Decl., para. 8).

19 9. In light of the foregoing, defendants respectfully
20 request the Court to extend the parties' deadline by which to
21 file dispositive motions in this case by 60 days, or through May
22 21, 2007. Beforehand, defendants are simply unable to complete
23 all processing of plaintiff's FOIA requests in a manner that

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would allow the Court to definitively rule in this case.

Respectfully submitted,

Dated: March 13, 2007

McGREGOR W. SCOTT
United States Attorney

By: /s/ Brian W. Enos _____
BRIAN W. ENOS
Assistant U.S. Attorney
Attorneys for defendants
Federal Bureau of
Investigation, Drug
Enforcement Administration,
United States Marshals Service
and Department of Justice

ORDER

IT IS SO ORDERED.

Dated: March 14, 2007
Om8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE